CHOK FOO CHOO

v.

THE CHINA PRESS BHD

COURT OF APPEAL, KUALA LUMPUR
GOPAL SRI RAM JCA
ABU MANSOR ALI JCA
DENIS ONG JCA
[CIVIL APPEAL NO: N-02-85-96]
7 NOVEMBER 1998

TORT: *Defamation - Libel - Statement calling appellant a cheat - Whether defamatory - Statement proved inaccurate - Whether respondent liable - Defence of fair comment - Principles and ingredients - Printing Presses and Publications Act 1984, s. 8A - Federal Constitution, art. 10*

The appellant is a member of a political party ('the MCA') whilst the respondent is the publisher of a newspaper known as the China Press. On 25 March 1988, the China Press published an article in which it quoted the MCA Lukut Branch Chairman, ie, the first defendant below, as saying that the appellant had created confusion amongst the residents of Taman Lukut by making a press statement that he, the appellant, was personally responsible for a certain road repair at Taman Lukut, when in fact the repair was attributable to the efforts of the MCA Lukut Branch. The article further quoted the first defendant as saying that, "The above facts clearly show that the MCA branch is really serving and solving problems of local residence of the area. Unlike certain people who is self considered as a devoted social worker, repeatedly releasing false statement on press in order to cheat the residents." The appellant took umbrage over the article and sued the respondent for libel. *Inter alia*, the appellant argued that the article was defamatory as it gave the impression that he was a cheat and untrustworthy, and that he was guilty of issuing false statements to the press with the intention of gaining popularity. The facts showed that the first defendant had denied uttering the words complained of, but that notwithstanding, the learned trial judge, however, took the view that the article was not defamatory as it was not lopsided and was touching upon a matter of public interest. He also ruled that the respondent did not intend to ridicule the appellant in public and so dismissed the appellant's claim. The appellant appealed.

Held:
Per Gopal Sri Ram JCA

[1] The first task of a court, in an action for defamation, is to determine whether the words complained of are capable of bearing a defamatory meaning. This is a question of law. Having decided the question, the next step is to ascertain whether the words complained of are in fact defamatory. This is a question of fact dependent upon the circumstances of the case.

[2] The article when read as a whole clearly suggests that the appellant is a person who, under the guise of doing service, was in fact making false statements in order to deceive the people of Lukut. The implication is that the appellant is a man given to deception and is untrustworthy. To say of a man that he is a cheat and a liar is a serious defamation of him. It has the effect of lowering the appellant in the estimation of right-thinking members of society generally.

[3] It is quite apparent as a matter of pure fact that the article defames the appellant. It literally calls him a cheat and a liar. There can be no dispute that the appellant was in fact libelled. The learned judge was in error when he held that the words complained of were not defamatory of the appellant.

[4] For fair comment to succeed the facts upon which comment is made must be true, or if untrue must have been published on a priveleged occasion. In this case, the fact that the respondent is a newspaper does not place it in any special position, and fair comment was clearly not available to the respondent. The defence of fair comment was destroyed upon the first defendant's evidence that he had never uttered the words complained of. That denial shows that it is not true that the words were in fact spoken.

[5] This court must disagree with the view of the learned judge that the article was not lopsided, if what the learned judge meant to say was that the article was 'fair' for purposes of the defence of fair comment. "Fair" in the defence of fair comment does not mean "not lopsided". It means "honest". The defence of fair comment in the circumstances has not been made out by the respondent, and it follows that the learned judge has seriously misdirected himself upon the law when arriving at his decision.

[Appeal allowed; matter remitted to trial judge for assessment of damages.]

*[**Bahasa Malaysia** Translation of Headnotes]*

Perayu adalah seorang ahli sebuah parti politik ('MCA') sementara responden merupakan sebuah akhbar yang dipanggil China Press. Pada 25 Mac 1988, China Press telah menyiarkan satu rencana di mana ia memetik Pengerusi Cawangan MCA Lukut, yakni defendan pertama di bawah, sebagai berkata bahawa perayu telah melahirkan kekeliruan di kalangan penduduk-penduduk Taman Lukut dengan membuat kenyataan akhbar bahawa beliau, iaitu perayu, adalah bertanggungjawab secara peribadi ke atas suatu kerja baikpulih jalan di Taman Lukut, sedangkan kerja baikpulih tersebut sebenarnya diusahakan oleh MCA Cawangan Lukut. Rencana berkenaan seterusnya memetik defendan pertama sebagai berkata "Fakta-fakta di atas menunjukkan dengan jelas bahawa cawangan MCA adalah pembela nasib penduduk setempat yang sebenar. Tidak seperti setengah orang yang menganggap dirinya sebagai pekerja sosial yang taat, yang sering kali membuat kenyataan akhbar palsu untuk menipu penduduk-penduduk". Perayu merasa tersinggung dengan rencana ini dan mendakwa defendan kerana memfitnah. Antara lain, perayu berhujah bahawa rencana tersebut berbau fitnah kerana memberi gambaran bahawa beliau adalah seorang penipu dan tidak boleh dipercayai, and bahawa beliau telah mengeluarkan kenyataan-kenyataan palsu kepada akhbar semata-mata untuk menjadi popular. Fakta menunjukkan bahawa defendan pertama telah menafikan bahawa beliau pernah mengucap kata-kata yang disungutkan itu. Hakim yang bijaksana, bagaimanapun, telah mengambil pendirian bahawa rencana tersebut tidak berbau fitnah oleh kerana ianya tidak berat sebelah serta menyentuh perkara yang mempunyai kepentingan awam. Beliau juga merumuskan bahawa responden sama sekali tidak berniat untuk memalukan perayu di khalayak ramai dan dengan itu menolak tuntutan perayu. Perayu merayu.

Diputuskan:
Oleh Gopal Sri Ram HMR

[1] Tugas pertama mahkamah, dalam suatu tuntutan fitnah, adalah untuk menentukan samada perkataan-perkataan yang disungutkan itu boleh diertikan sebagai pernyataan fitnah. Ini adalah merupakan persoalan undang-undang. Setelah persoalan ini dijawab, langkah seterusnya ialah menentukan samada perkataan-perkataan tersebut sebenarnya merupakan suatu fitnah. Ini merupakan suatu persoalan fakta yang bergantung kepada halkeadaan-halkeadaan kes.

[2] Rencana tersebut apabila dibaca secara keseluruhannya jelas menggambarkan bahawa perayu adalah seorang yang sebenarnya membuat kenyataan-kenyataan palsu untuk menipu penduduk Lukut, tetapi berselindung di sebalik kerja-kerja amal. Implikasinya ialah perayu adalah seorang yang suka menipu dan tidak boleh dipercayai. Untuk mengata

bahawa seseorang itu penipu dan pembohong adalah satu fitnah yang serius terhadapnya. Ia memberi kesan merendahkan perayu pada pandangan orang-orang yang berfikiran waras di kalangan masyarakat amnya.

[3] Ianya agak nyata sebagai suatu perkara fakta bahawa rencana berkenaan telah memfitnah perayu. Ia secara terus terang memanggilnya sebagai penipu dan pembohong. Tidak ada keraguan bahawa perayu sememangnya telah difitnah. Hakim yang bijaksana adalah tersilap bilamana beliau merumuskan bahawa perkataan-perkataan yang disungutkan itu tidak memfitnah perayu.

[4] Pembelaan 'fair comment' akan hanya berjaya jika fakta-fakta di atas mana komen tersebut didasarkan adalah benar, atau jika tidak benar ianya dibuat pada kesempatan yang diberi keistimewaan. Dalam kes semasa, fakta bahawa responden adalah sebuah akhbar tidak meletakkannya di tempat yang istimewa, dan pembelaan 'fair comment' jelas tidak terbuka bagi responden. Pembelaan 'fair comment' menjadi musnah ekoran keterangan defendan pertama bahawa beliau tidak pernah mengucapkan perkataan-perkataan yang disungutkan itu. Penafian tersebut menunjukkan bahawa adalah tidak benar bahawa perkataan-perkataan tersebut telah diucapkan.

[5] Mahkamah ini tidak bersetuju dengan pandangan hakim yang bijaksana bahawa rencana tersebut adalah 'not lopsided', sekiranya apa yang hendak dikatanya ialah bahawa rencana itu adalah 'fair' bagi maksud pembelaan 'fair comment'. 'Fair' dalam pembelaan 'fair comment' tidak bermaksud 'not lopsided'. Ianya bermaksud 'ikhlas'. Pembelaan 'fair comment' dengan itu tidak berjaya dibuktikan oleh responden, dan ianya mengikut bahawa hakim yang bijaksana telah tersalah arah akan dirinya berhubung perkara undang-undang sewaktu mencapai keputusannya.

[Rayuan dibenarkan; halperkara dikembalikan kepada hakim yang bijaksana untuk penilaian gantirugi.]

Cases referred to:

JB Jeyaratnam v. Goh Chok Tong [1985] 3 MLJ 334 ***(refd)***
Jones v. Skelton [1963] 3 All ER 952 ***(refd)***
Langlands v. Leng [1916] SC HL 102 ***(refd)***
London Artists Ltd v. Littler [1969] 2 QB 275 ***(refd)***
Sutherland v. Stopes [1925] AC 47 ***(refd)***
Tun Datuk Patinggi Hj Abdul-Rahman Ya'kub v. Bre Sdn Bhd & Ors [1996] 1 MLJ 393 ***(refd)***

Legislation referred to:

Federal Constitution, art. 10
Printing Presses and Publications Act 1984, s. 8A

Other source referred to:
The Law of Actionable Defamation, Dr Spencer Bower, p 101

For the appellant - Manian Raju; M/s R Shan & Assoc
For the respondent - M Punitha; M/s YS Woo & Proctor

[Appeal from High Court, Seremban; Civil Suit No: 23(25)-198-88]

Reported by WA Sharif

JUDGMENT

Gopal Sri Ram JCA:

This appeal arises from the judgment of the High Court at Seremban dismissing with costs the appellant's claim for defamation against the respondent. In the court below there were two other defendants, namely, Khoo Chee Hian ("the first defendant") and Nanyang Siang Pau Malaysia Berhad ("the third defendant"), but the claim against them was withdrawn by the appellant. They are therefore not before this court, although for some reason, not made entirely clear by counsel for the appellant, they appear as respondents in the appeal.

The appellant is a businessman a member of the Malaysian Chinese Association or M.C.A., which is a political party and several other voluntary service organisations. The respondent is the publisher of a well known newspaper in the Chinese language called "China Press". In the issue of the respondent's newspaper of 25 March 1988, there appeared an article, the agreed translation of the body of which reads as follows:

> The MCA Lukut branch today criticised Cheok Kee Lian for releasing an irresponsible statement through the Si-Rusa State Representative Mr. Krishnasamy claiming the merit of road resurfacing repair at Taman Lukut as his own.
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> The said branch described that Mr. Cheok Kee Lian (the appellant) had created confusion on the hearing and sight of the residence, therefore clarification on this matter was necessary.
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> In one of the statements, the said branch pointed out that all the local residence knew that the project of road resurfacing repair at Taman Lukut was approved on application of the said branch through Dr. Yew Chai Thiam and the branch chairman Mr. Khoo Chee Hian and committee member Mr. Hoo Thong Chuan together with others had actually measured the scene before the application and names were forwarded to the State Committee.
>
> The statement said: The above facts clearly show that the MCA branch is really serving and solving problems of local residence of the area. Unlike certain people who is self considered as a devoted social worker, repeatedly releasing false statement on press in order to cheat the residents.

> The statement released by the said branch chairman Mr. Khoo Chee Hian [the first defendant] also advised the Si-Rusa State Representative Mr. Krishnasamy not to be used by intended person unaware of the circumstances.
>
> This State Representative should strengthen the services at Si-Rusa constituency instead of creating waves beyond the boundary at Jimah constituency.

The appellant took umbrage over the article. He issued writ. In his statement of claim he alleged that the natural and ordinary meaning of the words in the offending article meant and were understood to mean, *inter alia*, that the appellant was a cheat and that he was guilty of issuing false statements to the press with the intention of gaining popularity. Or, as his counsel put it during the argument before us, the article conveyed the meaning that the appellant was untrustworthy. The appellant contended that it was a serious matter to accuse anyone, especially a politician of untrustworthiness.

At the trial, the first defendant gave evidence. He denied having used the words "cheat" or "false statement" which appeared in the article published by the respondent. Despite the compelling nature of the evidence led before him, the learned judge found the article in question not to be defamatory. He held that it was not lopsided (by which we understand him to say that it was fair in the ordinary sense) and that it was upon a matter of public interest relating to the welfare of a particular locality. He also found that the respondent did not intend to ridicule the appellant in public. He therefore dismissed the appellant's claim. With respect, I am unable to agree with the conclusions of the learned judge.

It cannot, I think, be doubted that the first task of a court, in an action for defamation, is to determine whether the words complained of are capable of bearing a defamatory meaning. And it is beyond argument that this is in essence a question of law that turns upon the construction of the words published. As Lord Morris put it in *Jones v. Skelton* [1963] 3 All ER 952 at p. 958:

> The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words (see *Lewis v. Daily Telegraph Ltd* [1963] 2 All ER 151). The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader, guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction, would draw from the words. The test of reasonableness guides and directs the court in its function of deciding whether it is open to a jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense.

In my judgment, the test which is to be applied lies in the question: do the words published in their natural and ordinary meaning impute to the plaintiff any dishonourable or discreditable conduct or motives or a lack of integrity on his part? If the question invites an affirmative response, then the words complained of are defamatory. (See, *J.B. Jeyaratnam v. Goh Chok Tong* [1985] 3 MLJ 334.) Richard Malanjum J, in an admirable judgment in *Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v. Bre Sdn Bhd & Ors* [1996] 1 MLJ 393 collected and reviewed the relevant authorities upon this branch of the subject and I would, with respect, expressly approve the approach adopted by him.

The article in the present instance when read as a whole clearly suggests that the appellant is a person who, under the guise of doing service, was in fact making false statements in order to deceive the people of Lukut. The implication is that the appellant is a man given to deception and is untrustworthy. I think that there can be no doubt that to say of a man that he is a cheat and a liar is a serious defamation of him. It has the effect of lowering the appellant in the estimation of right-thinking members of society generally. It follows that the learned judge in the present case clearly fell into error when he held that the words complained of were not defamatory of the appellant.

Having decided whether the words complained of are capable of bearing a defamatory meaning, the next step in the inquiry is for a court to ascertain whether the words complained of are in fact defamatory. This is a question of fact dependent upon the circumstances of the particular case. In England, libel actions are tried by judge and jury and the question is left for the jury to determine. However, in this country libel actions are tried by a judge alone, he is the sole arbiter of questions of law as well as questions of fact. He must therefore make the determination. In the present instance, it is quite apparent that as a matter of pure fact that the article defames the appellant. It literally calls him a cheat and a liar. There can, in my opinion, be no dispute that the appellant was in fact libelled. I am therefore unable to agree with the opposite conclusion arrived at by the learned judge who tried the action.

The fact that the respondent is a newspaper does not in my judgment place it in any special position in the law of libel. As Lord Shaw said in *Langlands v. Leng* [1916] SC (H.L.) 102, at p. 110, "A newspaper has the right, and no greater or higher right, to make comment upon a public officer or person occupying a situation than an ordinary citizen would have." Indeed, by reason of their capability to formulate and influence public opinion, those having control over the dissemination of news or views, whether by means of the print or electronic media, should act responsibly. Where publication is said to be factual, they must ensure that the facts they make available to their

readers, listeners or viewers are true. And where they comment upon matters of public interest, they must ensure that the language they use is not inflammatory or tainted with bias. They must bear in mind the serious consequences that might ensue as a result of irresponsible publication or sensationalising of news or views in a multiracial country as ours where there are many sensitive issues that are held in delicate balance. It is in recognition of these matters that Parliament has made the publication of false news an offence. (See, s. 8A of the Printing Presses and Publications Act 1984.) It is well established jurisprudence that courts should keep in tandem with the national ethos as reflected in the written laws passed by an elected legislature. In the present context this is achieved by enforcing the law of defamation in such a way as to ensure that there is truth in journalism while encouraging healthy and constructive criticism. For it must not be forgotten that the fundamental right to freedom of speech and expression guaranteed by art. 10 of the Federal Constitution carries with it a duty to exercise that right with a proper sense of responsibility.

To the appellant's claim, the respondent simply had no defence. On the facts made available to the court fair comment was not available to the respondent. It is an elementary principle of the law of defamation that for fair comment to succeed the facts upon which comment is made must be true, or if untrue must have been published on a privileged occasion. (See, *London Artists Ltd. v. Littler* [1969] 2 QB 275.) As Viscount Finlay observed in *Sutherland v. Stopes* [1925] AC 47 at p. 62:

> The defence of fair comment on matters of public interest is totally different. The defendant who raises this defence does not take upon himself the burden of showing that the comments are true. **If the facts are truly stated with regard to a matter of public interest,** the defendant will succeed in his defence to an action of libel if the jury are satisfied that the comments are fairly and honestly made. (Emphasis added.)

In the present instance, the first defendant's evidence to the effect that he never uttered the words complained of destroys the defence of fair comment since it is not true that the words were in fact spoken. Put simply, the offending article was not accurate because it attributed to the first defendant defamatory words of the appellant which he never uttered.

What I have said thus far is really sufficient for the determination of this appeal. But there is one other matter which I think I must deal with lest it be assumed that I agree with the learned judge upon it. It has to do with the learned judge's finding that the article in question was not lopsided by which I understand him to mean that it was "fair" for purposes of the defence of fair comment. If that is the meaning the learned judge intended to convey, I must express my disagreement with his view. "Fair" in the defence of fair comment does not mean "not lopsided". It means "honest".

To properly appreciate the nature of the defence of fair comment I can do no better than to reproduce its ingredients as set out by Dr. Spencer Bower in the second edition of his work entitled *"The Law of Actionable Defamation"*, where at p. 101 the learned author says this:

> In order that defeasible immunity may attach to the publication of any matter purporting to be comment, such comment must conform to each and every of the following conditions:
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> (i) It must be honest, that is to say, it must contain nothing which is not a genuine expression of the opinion actually entertained by the party defaming;
>
> (ii) It must be based on facts stated or assumed, and such facts, unless expressly or impliedly admitted by the party defamed, must be proved by the party defaming to be true;
>
> (iii) It must be relevant to, and arise out of, the facts so truly stated or assumed as aforesaid, and must not contain or introduce any new or independent defamatory matter;
>
> (iv) It must not contain any matter imputing discreditable motives to the party defamed, or any matter reflecting upon him otherwise than as the author of, or the person responsible for, or concerned in, or connected with the particular conduct, work, or thing which constitutes the subject of the comment.
>
> Comment which satisfies all the above conditions is called 'fair comment'.

The facts of the present case when tested against these ingredients clearly falls short of making out the defence of fair comment. It follows that the learned judge seriously misdirected himself upon the law when arriving at his decision.

For these reasons, I would allow this appeal and enter judgment for the appellant. I would also remit the matter to the learned judge to asses the damages that the respondent ought to pay the appellant. The respondent must bear the costs of this appeal and all the costs incurred in the court below, including the costs of the proceedings before the learned judge on the issue of damages.

My learned brothers Abu Mansor and Denis Ong Jiew Fook JJCA, have seen this judgment in draft and agree with the reasoning and the conclusions therein.